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12
13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

15
16 IN RE CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

17 This Document Relates To:

18 *ViewSonic Corporation v. Chunghwa*
19 *Picture Tubes, Ltd., et al.*, Case No. 3:14-
20 cv-02510

Master File No. 3:07-cv-05944-SC

MDL No. 1917

Individual Case No. 3:14-cv-02510

**PLAINTIFF VIEWSONIC
CORPORATION'S REPLY IN SUPPORT
OF MOTION FOR LEAVE TO FILE
SURREPLY IN OPPOSITION TO
PANASONIC DEFENDANTS' MOTION
TO DISMISS AND TO COMPEL
ARBITRATION**

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25 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**
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1 Panasonic's Opposition to ViewSonic's Motion for Leave to File a Surreply (Dkt. 2921)
 2 (the "Opposition") largely addresses ViewSonic's proposed surreply instead of the Motion for
 3 Leave (Dkt. 2916). The strategy is improper and is intended to distract from the fact that
 4 Panasonic's Reply in Support of the Motion to Dismiss (Dkt. 2899) addresses for the first time
 5 issues that Panasonic never raised in its Motion to Dismiss (Dkt. 2767) and that ViewSonic never
 6 raised in its Opposition to the Motion to Dismiss (Dkt. 2867). And the arguments that the
 7 Opposition does present fail to address the issues raised by ViewSonic in its Motion for Leave.

8 First, Panasonic argues that ViewSonic first raised contract interpretation issues "by
 9 submitting extrinsic evidence of the agreement's drafting history and ViewSonic's dealings with
 10 third parties" in its Opposition to the Motion to Dismiss. Opposition at 1. Panasonic's argument
 11 misses the mark. In its Opposition to Panasonic's Motion to Dismiss, ViewSonic's arguments
 12 centered solely on *whether* certain claims are arbitrable, and not *who should determine* whether
 13 certain claims are arbitrable. Those two issues are completely distinct, the latter of which
 14 Panasonic only raised in its Reply to ViewSonic's Opposition. Panasonic never addressed the
 15 issue in its Motion to Dismiss, so ViewSonic never addressed the issue in its Opposition. Indeed,
 16 ViewSonic operated under the assumption that the Court, and not an arbitrator, would make the
 17 decision on arbitrability, as this Court has done on multiple other occasions in this MDL, and as
 18 other similar courts within this district have done as well. ViewSonic did not address the issue
 19 because it was not raised until Panasonic's Reply in Support of its Motion to Dismiss.
 20 ViewSonic should have the opportunity to respond to Panasonic's newly raised argument on this
 21 issue.

22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED] Nor does Panasonic point to anything in ViewSonic's Opposition to the
 25 Motion to Dismiss suggesting as much. In an apparent concession that the issue was never
 26 addressed at any point prior to its Reply, Panasonic resorts to making arguments about the
 27 substance of the surreply in its Opposition. But that is clearly improper, and the Court should
 28 strike these arguments. At this point, the only issue for the Court is whether the issue was ever

1 raised by the parties prior to the Reply, and Panasonic provides no evidence that it was.¹

2 Finally, Panasonic argues that the proposed surreply's contentions regarding extrinsic
3 evidence are improper because the "Reply simply responded to a new issue presented by the
4 Opposition." Opposition at 4. Panasonic further suggests that its Reply was proper because it
5 could not have "anticipated and preemptively addressed...the possibility that ViewSonic would
6 seek to introduce improper extrinsic evidence." *Id.* This argument amounts to a concession by
7 Panasonic that it only raised the issue in its Reply because it could not have anticipated that
8 ViewSonic would include extrinsic evidence in its Opposition. And that alone provides ample
9 support for ViewSonic's assertion that the issue is newly raised.

10 Putting Panasonic's concession aside, the argument is also beside the point. ViewSonic is
11 not contesting the fact that Panasonic made the argument; rather, ViewSonic merely wants an
12 opportunity to respond to it. As ViewSonic noted in its surreply, the cases presented by
13 Panasonic in support of these arguments are distinguishable, and fail to accurately present the
14 state of the law on the issue. The argument is newly raised, and ViewSonic's surreply will
15 provide additional assistance to the Court in making a decision. For these reasons and the reasons
16 contained in the Motion for Leave, the Court should permit ViewSonic to file its proposed
17 surreply to respond to arguments that Panasonic first raised in the Reply.

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22 ¹ The Opposition attaches exhibits that purportedly contradict the California Appellate Court's
23 conclusion in *Gilbert Street Developers, LLC v. La Quinta Homes, LLC*, 174 Cal. App. 4th 1185
24 (2009) that the rule allowing an arbitrator to determine their own jurisdiction did not exist at the
25 time the parties entered into OEM Agreement. ViewSonic cited to this case because the case is
26 on point, has not been overruled, and still represents good law. In any case, as ViewSonic argued
27 in its surreply, ViewSonic only [REDACTED]. The
28 only issue currently before the Court is whether the arguments identified in ViewSonic's Motion
for Leave to File a Surreply are newly raised. They are. And the Court should permit ViewSonic
to file its surreply.

1 Dated: October 20, 2014

Respectfully submitted

2 /s/ Jason C. Murray

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